

ADORNO & POSS

A LIMITED LIABILITY PARTNERSHIP
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WWW.ADORNO.COM

JAN DOUGLAS ATLAS

EMAIL: JDA@ADORNO.COM

January 5, 2010

VIA CERTIFIED MAIL AND FACSIMILE

Mr. Irving H. Picard, Trustee
c/o Baker & Hostetler LLP
Attn: Claims Department
45 Rockefeller Plaza
New York, NY 10111

**Re: Bankruptcy Case No. 08-1789 (BLR) / Opposition to Trustee's Denial
of Claim Filed by Dr. Steven and Debra Fagien / Claim No. 4277**

Dear Mr. Picard:

This letter is in opposition to the Notice of Trustee's Determination of Claim dated December 8, 2009, denying the claim of Dr. Steven and Debra Fagien ("Claimants") pursuant to the Securities Investor Protection Act, 15 U.S.C. 78aaa, *et seq.* ("SIPA").

SIPA "is remedial legislation. As such it should be construed liberally to effect its purpose." *In re First State Securities Corp.*, 34 B.R. 492, 496 (Fla. 1983) (quoting *Tcherepnin v. Knight*, 389 U.S. 332 (1967)). "The purpose is the protection of the insolvent brokers' customers." *Id.* at 496. In *Securities and Exchange Commission v. F. O. Baroff Co., Inc.*, 497 F.2d 280 (2d Cir. 1974) [hereinafter, "*F. O. Baroff Co.*"], the Second Circuit gave a detailed analysis of SIPA's legislative history and intent. *Id.* at 281. Specifically, the court stated that:

[t]he object of that statute, and the function of the Securities Investor Protection Corporation (SIPC) it created, is to protect the public customers of securities dealers from suffering the consequences of financial instability in the brokerage industry...Once a broker or dealer is found to be on the brink of collapse or in danger of failing to meet its obligations to its customers, a trustee is appointed for liquidation of the business. The firm's [sic] clients are cushioned (within limits) from personal loss through a special fund collected by SIPC from all securities dealers registered under the 1934 Securities Exchange Act...But the Securities Investor Protection Act allows only those who meet its definition of a 'customer' to share in this assurance.

Mr. Irving H. Picard
January 5, 2010
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F. O. Baroff Co., 497 F.2d at 281. Citing the House of Representatives, the court went on to state that “[t]he primary purpose of [SIPA] is to provide protection for investors if the broker-dealer with whom they are doing business encounters financial troubles.” *Id.* at 283. In furtherance of SIPA, SIPC, “an independent corporation established by Congress,” was created, “to reestablish[] confidence in the securities markets” by “protect[ing] investors from the effects of chronic instability in the securities industry.” *Massachusetts Financial Services, Inc. v. Securities Investor Protection Corp.*, 411 F. Supp. 411, 412-13 (D.C. Mass. 1976). SIPC’s “prime responsibility [is] to establish...a substantial reserve fund which...provide[s] protection to investors in the event a brokerage firm collapse[s].” *Id.* at 413.

SIPA defines the term “customer” of a debtor as:

any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral security, or for purposes of effecting transfer. The term “customer” includes any person who has a claim against the debtor arising out of sales or conversions of such securities, and any person who has deposited cash with the debtor for the purpose of purchasing securities...

15 U.S.C.A. § 7811(2) (emphasis added).

The United States District Court for the Southern District of New York further discussed the definition of the term “customer” in *Securities and Exchange Commission v. Kenneth Bove & Co., Inc.*, 378 F. Supp. 697 (S.D.N.Y. 1974) [hereinafter “*Kenneth Bove & Co.*”]. The court found that in order to be considered a “customer” under SIPA, “the claimant must have entrusted his securities to the debtor in liquidation,” and have been “on account of securities received, acquired, or held by the debtor.” *Id.* at 699. Claims pursuant to SIPA are “grounded on possession of identifiable securities by the broker.” *Id.* Under SIPA, **“the preferential protection is accorded to a person who can trace and identify the...funds in the hands of the stockbroker.”** *Id.* (emphasis added).

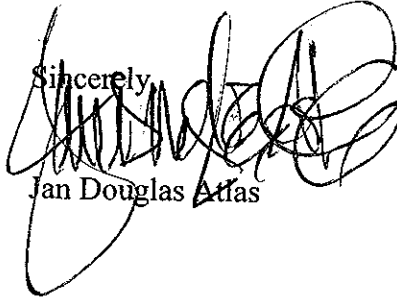
In this case, Claimants’ funds are traceable and can be identified as being in the direct control of Bernard L. Madoff Investment Securities LLC. Claimants transferred and placed the amount of \$500,000.00 (the “Investment”) with Emerald Asset Advisors, LLC which purchased with the Investment a limited partnership interest in the Rye Select Broad Market Fund, LP (“Rye Fund”) under the authority of the Rye Fund’s General Partner, Tremont Partners, Inc. (“Tremont Partners”), a subsidiary of Tremont Group Holdings, Inc. Attached hereto are copies of supporting documents evidencing the Investment in the limited partnership interest (the “Securities”). Tremont Partners placed all of the assets of the Rye Fund with Bernard L. Madoff

Mr. Irving H. Picard

January 5, 2010

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Investment Securities LLC. The final account statement, attached hereto, reflects Securities owed to Claimants in the amount of \$530,597.06. Claimants are clearly "customers" under SIPA and should be afforded its protection. The fact that Claimants' funds were not given directly from Claimants to Bernard L. Madoff Investment Securities LLC is of no consequence. As investors, Claimants should be protected from the effects of the instable securities industry and, more specifically, the collapse of Bernard L. Madoff Investment Securities LLC, in which Claimants' assets were invested through their agents, Emerald Asset Advisors, LLC, the Rye Fund, and Tremont Partners. To deny Claimants' claim would directly contravene the legislative intent of SIPA. Accordingly, Claimants respectfully request that the denial of their claim be reversed; that their claim be granted; and that they be afforded the protection to which they are entitled pursuant to SIPA.

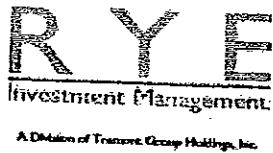
Sincerely,

Jan Douglas Atlas

JDA/cab

Enclosure

cc: United States Bankruptcy Court
for the Southern District of New York (by mail only)

Dr. Steven and Debra Fagien



BNY ALTERNATIVE INVESTMENT
SERVICES, INC.
101 Barclay Street
20th Floor West
New York, New York 10286
USA

Dr. Steven and Debra Fagien
3863 W. 53rd Street
Boca Raton, FL 33496
USA

CLIENT STATEMENT

A/C Number: 00-1200-800002851

Period Beginning: 01-Nov-2008

Period Ending: 30-Nov-2008

Fax Number:

E-Mail:

Initial Investment \$500,000
in April 2008

PERFORMANCE SUMMARY

Security	% Change	
	Period to Date	Year to Date
Rye Select Broad Market Fund, LP	1.70%	6.12%

PERIOD ACTIVITY

Security	Net Opening Capital	Contribution	Net Income / (Loss)	Withdrawals / Trans / ReReg	Net Closing Capital
Rye Select Broad Market Fund, LP	521,721.69	0.00	8,875.37	0.00	530,597.06
Totals	521,721.69	0.00	8,875.37	0.00	530,597.06

DISCLOSURE NOTES

- % Change results are Net of all fees.
- Year To Date change is based on Calendar Year which ends on December 31st.
- All values are in USD.
- This information is not intended to be used for tax reporting or planning.
- This information is unaudited. Audited statements are issued upon conclusion of the fiscal year end audit.
- The Fund's net asset value has been calculated on the basis of market value information with respect to the Fund's portfolio obtained from third parties, including independent pricing vendors, the Fund's manager and administrators of funds in which the Fund may have invested. BNY-AIS does not give any assurances with respect to the accuracy of such market value information.
- Past performance as described herein is not necessarily indicative of future results.
- The Bank of New York acts as custodian with respect to cash. With respect to the portfolio's investments, such investments have been and will continue to be custodied for the benefit of the portfolio at Bernard L. Madoff Investment Securities LLC, 885 Third Avenue, New York, NY, 10022.
- Additional information is available at www.ryeselectfunds.com.

INVESTOR INQUIRIES

Telephone: 212.815.4090 Facsimile: 212.644.6669 Email: AISOnline_NY@bankofny.com Web: www.fundadmin.com

As you requested copies of this statement have been sent to:

Allan Budelman
Denise Karp
Ms. Pamela Palmer



BNY ALTERNATIVE INVESTMENT
SERVICES, INC.
101 Barclay Street
20th Floor West
New York, New York 10286
USA

Dr. Steven and Debra Fagien
3863 W. 53rd Street
Boca Raton, FL 33496
USA

CLIENT STATEMENT

A/C Number: 00-1200-800002851

Period Beginning: 01-Apr-2008

Period Ending: 30-Apr-2008

Fax Number:

E-Mail:

PERFORMANCE SUMMARY		
Security	% Change	
	Period to Date	Year to Date
Rye Select Broad Market Fund, LP	1.06%	1.06%

PERIOD ACTIVITY					
Security	Net Opening Capital	Contribution	Net Income / (Loss)	Withdrawals / Trans / ReReg	Net Closing Capital
Rye Select Broad Market Fund, LP	0.00	500,000.00	5,306.40	0.00	505,306.40
Totals	0.00	500,000.00	5,306.40	0.00	505,306.40

DISCLOSURE NOTES
<ul style="list-style-type: none">• % Change results are Net of all fees.• Year To Date change is based on Calendar Year which ends on December 31st.• All values are in USD.• This information is not intended to be used for tax reporting or planning.• This information is unaudited. Audited statements are issued upon conclusion of the fiscal year end audit.• The Fund's net asset value has been calculated on the basis of market value information with respect to the Fund's portfolio obtained from third parties, including independent pricing vendors, the Fund's manager and administrators of funds in which the Fund may have invested. BNY-AIS does not give any assurances with respect to the accuracy of such market value information.• Past performance as described herein is not necessarily indicative of future results.• The Bank of New York acts as custodian with respect to cash. With respect to the portfolio's investments, such investments have been and will continue to be custodied for the benefit of the portfolio at Bernard L. Madoff Investment Securities LLC, 885 Third Avenue, New York, NY, 10022.• Additional information is available at www.ryeselectfunds.com.

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Telephone: 212.815.4090 Facsimile: 212.644.6669 Email: AISOnline_NY@bankofny.com Web: www.fundadmin.com

As you requested copies of this statement have been sent to:

Allan Budelman
Ms. Pamela Palmer

charles SCHWAB Waive wire fee Wire Transfer Letter of Authorization
INSTITUTIONAL

Page 1 of 2

Investment Advisor ("IA") Information (This portion to be completed by IA.)

IA Firm Name (please print): EMERALD ASSET ADVISORS LLC

IA Master Account Number: 8962470

Service Team: IST 2

- The wire transfer fee is \$25. For foreign wires, contact your Investment Advisor for specific information required.
- Note: Distribution forms are required for retirement accounts. Call your Investment Advisor for the correct form.

1. One-Time or Standing Instructions (Select A or B.)

A. ☒ One-time

B. ☐ Standing Instructions Authorization (optional)

Please initial below only if you want your IA to initiate wire transfers to accounts of unlike registration.
You may revoke this authorization by notifying Schwab. (An X is not sufficient.)

Standing Instructions. I authorize Schwab to transfer funds from this account to the receiving bank name on this form at the direction of my IA. I have previously granted my IA disbursement authority (LPFA or WPFA) on this Schwab account. I hereby acknowledge that this authority is effective regardless of any differences in registration between these two accounts.

Account Holder/Trustee/
Custodian/Executor

Additional Account Holder/
Co-Trustee/Co-Custodian/
Co-Executor

2. Schwab Account Information

Steven & Debra Fagien

Account Holder Name(s) (as they appear on your statement)

8065-8328
Schwab Account Number

3. Receiving Bank Information (For examples, see Section 5.)

500,000.00

Amount to Be Wired (in U.S. Dollars)

Bank of New York

Amount to Be Wired (in Foreign Currency)

Foreign Currency Type

Receiving Bank Name

021000018

Receiving Bank Phone Number

Receiving Bank Routing Number (ABA, IBAN or SWIFT code)

8900631473

Receiving Bank Address (required for foreign bank)

Account Number at Receiving Bank

Rye Select Broad Market Fund, LP (Intended Investor: Steven & Debra Fagien)

Name(s) on Receiving Bank Account (registration)

555 Theodore Fremd Ave Suite C-300 Rye, NY 10580

Address of Account Holder at Receiving Bank if Different from Schwab Account Registration (example: Brokerage Firm/Escrow Company)

Further Credit/Escrow Account Number (if applicable)

Escrow Company Phone Number

Name of Final Beneficiary (if applicable)

Address of Final Beneficiary (required if final beneficiary is different from Schwab account registration)

4. Please Read and Sign (Signatures required.)

Please note: I understand that wiring funds outside of the U.S. may take three to five business days.

I authorize Charles Schwab & Co., Inc. ("Schwab") to wire funds from my Schwab account pursuant to the above instructions. I agree to indemnify and hold harmless Schwab, its affiliates and their directors, officers, employees and agents from and against all claims, actions, costs and liabilities, including attorneys' fees, arising out of or relating to: (1) their reliance on this Letter of Authorization, and (2) Schwab's execution of IA's instructions.

Please note: If this is a Custodial account, I acknowledge and agree that any funds or securities transferred out of the account, and into the account of the custodian or other account, shall be used or applied solely for the benefit of the minor.

For standing instructions only: I understand that Schwab may accept future requests to wire funds from my account according to the above instructions. Such requests may be made by any person having signing authority with respect to my Schwab account and may be delivered orally, in person or by telephone, or may be transmitted by facsimile or delivered in a signed writing.

Signature: Account Holder/Trustee/Custodian/Executor

Steven Fagien

Date 3/8/08
(mm/dd/yyyy)

Signature: Additional Account Holder/Co-Trustee/Co-Custodian/Co-Executor

Debra Fagien

Date 3/8/08
(mm/dd/yyyy)

Signature: Investment Advisor (if applicable)

Print Name

Date
(mm/dd/yyyy)

Note: Investment Advisor may sign only if the account holder has granted disbursement authority AND there is a final beneficiary account number whose registration is IDENTICAL to the Schwab account registration. Investment Advisor may also sign for real estate escrow wires if the account holder is the beneficial owner of the wired funds and has granted disbursement authority.



charles SCHWAB
INSTITUTIONAL

March 25, 2008

Account Number: 8065-8328

Questions:
800-515-2157

Page 1 of 1

03/25-CL250002-001400-SML-33496270300-002831 *

Steven Fagien &
Debra Fagien Ten By Ent
3863 Nw 53 Street
Boca Raton, FL 33496



001400

Notice of Wire and Third Party Disbursement(s)

What Has Occurred

As of the date of this letter, Schwab has processed the following transaction(s) from your account listed above:

Wire Transfers

Reference Number

Amount: \$500,000.00

0325I1B7035R002737

Dollar value(s) cited are not intended for tax use. Schwab does not provide tax advice. Please consult your tax advisor.

If a disbursement was from a retirement account, and you requested tax withholding, the funds recipient was paid the net amount.

Next Steps

If you do not recognize this transaction or if you have any other questions regarding the transaction, please contact us immediately at the telephone number above.

0305-00548

Schwab One® Account of
STEVEN FAGIEN &
DEBRA FAGIEN TEN BY ENT

Account Number
8065-8328

Statement Period
March 1-31, 2008



G000013901618

Transaction Detail - Deposits & Withdrawals

Transaction Date	Process Date	Activity	Description	Location	Credit/(Debit)
03/05/08	03/05/08	Funds Received	FUNDS RECEIVED		500,000.00
03/12/08	03/12/08	Journalized Funds	JOURNAL TO 12342159		(700,000.00)
03/12/08	03/12/08	Journalized Funds	JOURNAL TO 53140339		(300,000.00)
03/19/08	03/19/08	Journalized Funds	JOURNAL TO 12342159		(8,637.02)
03/25/08	03/25/08	Journalized Funds	JOURNAL FRM 53140339		115,232.00
03/25/08	03/25/08	Journalized Funds	JOURNAL FRM 12342159		420,769.00
03/25/08	03/25/08	Funds Paid	WIRED FUNDS DISBURSED		(500,000.00) *
03/27/08	03/27/08	Journalized Funds	JOURNAL TO 12342159		(16,001.00)
03/27/08	03/27/08	Journalized Funds	JOURNAL TO 53140339		(20,000.00)
Total Deposits & Withdrawals					(692,637.02)

Transaction Detail - Dividends & Interest (including Money Market Fund dividends reinvested)

Transaction Date	Process Date	Activity	Description	Credit/(Debit)
03/17/08	03/17/08	Dividend	SCHWAB US TREAS MONEY FD	509.05
Total Dividends & Interest				509.05

Transaction Detail - Fees & Charges

Transaction Date	Process Date	Activity	Description	Credit/(Debit)
03/25/08	03/25/08	Service Fee	WIRED FUNDS FEE	(25.00)
03/25/08	03/25/08	Misc Cash Entry	WAIVE WIRE FEE	25.00
Total Fees & Charges				0.00

Schwab has provided accurate gain and loss information wherever possible for most investments. Cost basis data may be incomplete or unavailable for some of your holdings. Please see "Endnotes for Your Account" section for an explanation of the endnote codes and symbols on this statement.

07342210-001390 665689

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BNY ALTERNATIVE INVESTMENT
SERVICES, INC.
101 Barclay Street, 20th Floor West
New York, New York 10286
USA

Fax: 954-385-9624
E-mail: abudelman@emeraldasset.com

02-Apr-2008

Allan Budelman
2843 Executive Park Drive
Weston, FL 33331
USA

CONFIRMATION OF CASH RECEIPT

Dear Investor,

We are pleased to confirm the receipt of your proceeds on behalf of Rye Select Broad Market Fund, LP. The details below confirm the specifics of the transaction. Your proceeds will not be invested until all requisite documentation has been received in good order and your eligibility as an investor in Rye Select Broad Market Fund, LP has been confirmed.

Please take a moment to review this confirmation to ensure that all details pertaining to this transaction and your account are correct. If any discrepancies are identified please contact our Investor Services Group as described below.

ACTIVITY CONFIRMED

Details

Action	Cash Received
Date Received	25-Mar-2008
Amount Local	500,000.00 USD
Amount Base	500,000.00 USD

To Be Applied

Dealing Date	01-Apr-2008
Security	Rye Select Broad Market Fund, LP

ACCOUNT INFORMATION

Acct. Name Dr. Steven and Debra Fagien

Acct. Number 01-2008-00002851

Telephone 561-241-8450

Facsimile --

Email

INVESTOR INQUIRIES

Telephone 212.815.4090

Facsimile [212.644.6669](tel:212.644.6669)

Email AISOnline_NY@bankofny.com

Web www.fundadmin.com

RYE

Investment Management

A Division of Tremont Group Holdings, Inc.

BNY ALTERNATIVE INVESTMENT
SERVICES, INC.
101 Barclay Street, 20th Floor West
New York, New York 10286
USA

Fax: 954-385-9624

E-mail: abudelman@emeraldasset.com

21-Apr-2008

Allan Budelman
2843 Executive Park Drive
Weston, FL 33331
USA

TRADE CONFIRMATION

Dear Investor,

We are pleased to confirm your investment into Rye Select Broad Market Fund, LP. The details below confirm the specifics of the transaction executed on your behalf.

Please take a moment to review this confirmation to ensure that all details pertaining to this transaction and your account are correct. If any discrepancies are identified please contact our Investor Services Group as described below.

ACTIVITY CONFIRMED

Security		Rye Select Broad Market Fund, LP	
Details		Contributions	
Action	Buy	Gross Contribution	500,000.00
Dealing Date	1-Apr-2008	Sales Charge/Interest Payment	0.00
Base Currency	USD	Net Contribution	500,000.00
Lot Ref. Number			

ACCOUNT INFORMATION

Acct. Name Dr. Steven and Debra Fagien

Acct. Number 01-2008-00002851
Telephone 561-241-8450
Facsimile --
Email

INVESTOR INQUIRIES

Telephone 212.815.4090

Facsimile 212.644.6669

Email AISOnline_NY@bankofny.com

Web www.fundadmin.com